IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3356 OF 2001

Feroz Shabbar Hussain, aged)
Adult, Landlord, residing at)
Gulmohar Apartments, Flat No.)
205, Second Floor, Hamid Mulla)
Road, (New Uran Road), Panvel,)
District Raigad, for himself and)
as the only son and legal)
representative of late Rabbabai)
Shabbar Hussain, who expired on)
22-1-1997. ... ...)... Petitioner.

Versus

1) The State of Maharashtra)
2) The Sub-Divisional Officer,)
Panvel, District Raigad.)
3) The Deputy Conservator or)
Forests, Alibag, District)
Raigad. .. ...)... Respondents.

Mr. G. V. Limaye for the Petitioner.

Mr. S.R.Nargolkar, AGP for the Respondents.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.
DATED : 29TH MARCH, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

By this petition, the Petitioner impugns the order dated 4th October, 2005 passed by the Minister for Revenue and Forests as a Revisional Authority under Section 18 of the Maharashtra Private Forests (Acquisition) Act, 1975 (for short "M.P.F. Act"). The Petitioner also seeks prohibitory injunction restraining Respondents to dispossess him from the agricultural land bearing Gat No. 46/1, admeasuring 2 Hectares 96 Ares situated at Village Barwai, Tal. Panvel, Dist. Raigad.

2. The land in question was originally held by one Narayan Govind Shete and bore survey No. 27, Hissa No.4. On 24th January, 1961 a notice under Section 35(3) of the Indian Forests Act was issued and the landlord was called upon to show cause as to why the land be no declared as a private forest. The Petitioner claims to be legal representative of deceased Smt. Rubbabai Shabbar Hussein, who had

acquired the land in question from the original holder, namely, Narayan Govind Shete. An application was submitted for grant of licence to extract stone/rubble/murum from a natural quarry available in the said land. The licence was issued but later on cancelled.

3. The Petitioner and Smt. Rubbabai, predecessor in title of the Petitioner, had preferred a writ petition (Writ Petition No.309 of 1982) challenging the order of cancelling licence for quarrying in the said land. The petition was, however, dismissed on 4th September, 1990. Thereafter an application was filed on 11th March, 1991 before the Sub-Divisional Officer / Deputy Collector, Panvel to start inquiry under Section 22-A, suo motu and to release the land from declaration as forest land. The Sub-Divisional Officer / Dy. Collector, Panvel, granted the application and held that though notice under Section 35 (3) of the Forests Act was issued, yet Notification under Section 35(1) of the Forests Act was not issued and therefore the land could not be treated as private forest. Consequently, the Sub-Divisional Officer / Deputy Collector, Panvel, held that there was no need to proceed under Section 22-A of the Maharashtra Private Forests (Acquisition) Act, 1975. It was declared that

the Petitioner was free to enjoy the land in question.

4. Feeling aggrieved, a revision petition was preferred by Respondent No.2. The revision petition came to be allowed by order dated 4th October, 2000 passed by the Minister for Forests. It is this order, which is subject matter of the challenge in the present petition.

5. According to the petitioner, previous Writ Petition No. 309 of 1982 was dismissed on technical ground and it was only regarding the permission for use of the land for quarrying, which was revoked on 23rd December, 1981. The Petitioner has no other source of income and depend upon the income derived from the stones quarry. The land in question was not used as a forest and could not be declared as such. The declaration of private forest ought to have been made within a period of one year after the notice but the same was not done and as such the land in question cannot be treated as a private forest. It is further contended that Respondent No.3 failed to prefer any appeal against the order of the Sub-Divisional Officer / Deputy Collector, Panvel, and as such the order dated 20th June, 1994 became final. The impugned order is, therefore, bad-in-law and deserves to be set

aside.

6. We have heard learned Counsel for the parties and have perused the relevant documents available on record. There is no dispute about the fact that a notice under Section 35(3) of the Forests Act was issued on 24th January, 1961. It appears that the previous owner, namely, Shri Narayan Govind Shete was duly served with the copy of the said notice on 17th March, 1961.

7. Learned Counsel, Shri Limaye, submits that the definition of expression "private forest" as envisaged under Section 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975 is not properly considered by the Honourable Minister for Forests and as such the impugned order is bad-in-law. He further argued that when there was no appeal preferred by Respondent No.2, the revision should not have been entertained by the Honourable Minister. He further contended that the Notification under Section 35(1) of the Forests Act has not been issued and as such the land in question cannot be treated as a private forest. Lastly, it is urged that atleast 2 Hectares land should have been excluded from the declaration made under the impugned order. On the other hand, the

leaned Additional Government Pleader, Shri Nargolkar, has supported the impugned order.

8. The revision application was moved by Respondent No.3 under Section 18 of the Maharashtra Private Forests (Acquisition) Act, 1975 on 14th June, 1995. This application was filed within one year from the date of order passed by the Sub-Divisional Officer / Dy. Collector, Panvel. The powers of revision under Section 18 are available to the Government. In the present case, there appears no illegality committed by the Honourable Minister, while entertaining the revision petition under Section 18. The revision is not barred if appeal is not preferred.

9. The order passed by the Sub-Divisional Officer / Deputy Collector, Panvel, would show that due to absence of Notification under Section 35(1) of the Forests Act it was declared that the land in question cannot be treated as private forest. This approach of the Sub-Divisional Officer / Deputy Collector, Panvel, is itself incorrect. This Court in the case of **Ankush Keshav Bowledkar v/s State of Maharashtra** [1998 (3) Mah. L.J. 776, has held that if a notice has been issued under Section 35(3) of the Indian Forest Act, 1927 in respect of any land prior to coming into force

of the Maharashtra Private Forests (Acquisition) Act, 1975 on 30th August, 1975 such land in respect of which a notice has been issued becomes private forest under Section 2(f) of the Maharashtra Private Forests (Acquisition) Act, 1975. It is further held that the crucial and relevant aspect is issuance of notice under Section 35(3) of the Forests Act and not its service. So also, in the case of **Chintamani Gajanan Velkar v/s State of Maharashtra**, AIR 2000 SC 1073, it is laid down that if notice is issued under Section 35(3) of the Forests Act prior to the appointed date i.e. 30th August, 1975 then the land will have to be regarded as "private forest". Needless to say the absence of notification under Section 35(1) of the Forests Act could not be treated as a ground to declare the land in question as outside the definition of expression "private forest" as was done by the Sub-Divisional Officer / Deputy Collector, Panvel.

10. True, the part of the land in question is used for quarrying purpose. We cannot overlook the fact, however, that predecessor in title of the Petitioner, namely, Smt. Rubbabai started using a portion of the land for quarrying only somewhere in 1981. A part of the land could be used for quarrying purpose only after obtaining licence in 1981 but that will not

change the nature of the land. The subsequent events and change of user are immaterial once it is found that notice under Section 35(3) of the Forests Act was issued. We cannot overlook the fact that the original holder of the land i.e. Narayan Govind Shete had never challenged the notice at any point of time. The Petitioner herein and Smt. Rubbabai Shabbar Hussain filed an application dated 11th March, 1991 for inquiry under Section 22-A and Section 6 of the Maharashtra Private Forests (Acquisition) Act, 1975 (Exhibit "F"). The provisions of Section 6 only deals with power of the Collector to decide the question where the dispute arises as to whether or not any forest is a private forest or whether or not any private forest or portion thereof is vested in the State Government. For restoration of forest land to owner under certain circumstances resort can be taken to Section 22-A of the Maharashtra Private Forests (Acquisition) Act, 1975. Section 22-A(1) reads thus:

> "22-A(1). Notwithstanding anything contained in the foregoing provisions of this Act, if, on an application made by any owner of private forest, within a period of six months from the date of commencement of the Maharashtra Private Forests

> (Acquisition) (Amendment) Act, 1978, or *suo motu* at any time, the Collector, after holding such inquiry as he deems fit, is satisfied that the total holding of land of such owner became less than twelve hectares on the appointed day on account of acquisition of his forest land under this Act or that the total holding of land of such owner was already less than twelve hectares on the day immediately preceding the appointed day, the Collector shall determine whether the whole of the forest land acquired from such owner or what portion thereof shall be restored to him, so, however, that his total holding of land, on the appointed day, shall not exceed twelve hectares."

11. A plain reading of sub-clause (1) of Section 22-A of the Forests Act makes it manifest that such application has to be filed by an owner of private forest within a period of six months from the date of commencement of the Maharashtra Private Forests (Acquisition) (Amendment) Act, 1978. The application was not filed within a period of six months after the commencement of the said Act but it was filed long

thereafter on 11th March, 1991. Obviously such application was barred by limitation and could not have been entertained by the Sub-Divisional Officer / Deputy Collector, Panvel. There is no prayer in the application (Exhibit "F") to delete 2 hectares land as provided under sub-clause (f)(iii) of Section 2 of the Maharashtra Private Forests (Acquisition) Act, 1975. The application (Exhibit "F") reveals that the applicants, who were aware that the limitation for filing of such application was over and the application was time barred, therefore, had submitted a lame excuse to the effect that their another petition was pending before the High Court till 1990. The pendency of such another petition (Writ Petition No. 390 of 1982) had nothing to do with the inquiry under Section 22-A in as much as it pertained only to the extent of licence for quarrying in the land, which was subsequently revoked. Under the circumstances, the Revisional Authority has rightly held that when the notice under Section 35(3) was issued much prior to the commencement of the Maharashtra Private Forests (Acquisition) Act, 1975 then the land did vest in the Government as a private forest. The impugned order, therefore, does not call for any interference.

12. In the result, we are inclined to hold that the

land in question is a private forest and the impugned order is quite sustainable. Hence, the petition is dismissed. Rule discharged. There shall be no order as to costs.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)